

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

STEVEN M. JACOB,)	4:10CV3073
)	
Petitioner,)	
)	
v.)	MEMORANDUM
)	AND ORDER
ROBERT HOUSTON,)	
)	
Respondent.)	

This matter is before the court on Petitioner’s Motion for Leave to Proceed In Forma Pauperis (“IFP”) on Interlocutory Appeal. (Filing No. [42](#).) Also pending are Petitioner’s Objection to Respondent’s Motion for Extension of Time (filing no. [39](#)), and Motion for Certificate of Appealability (filing no. [44](#)).

Petitioner filed his Notice of Interlocutory Appeal and Motion for Leave to Appeal IFP on March 2, 2011. (Filing Nos. [41](#) and [42](#).) In his Notice, Petitioner seeks to appeal the court’s December 23, 2010, Memorandum and Order that denied his Motion to Stay. (Filing Nos. [34](#) and [41](#).) However, that Memorandum and Order is not a final order, and judgment has not been entered in this matter. As set forth in [28 U.S.C. § 1292\(b\)](#), an interlocutory appeal is warranted if the decision sought to be appealed involves a controlling question of law as to which substantial grounds for difference of opinion exist, so that an immediate appeal could materially advance the ultimate termination of this litigation. [28 U.S.C. §1292\(b\)](#).

Here, no such “controlling question of law” is implicated. The court’s December 23, 2010, Memorandum and Order does not involve controlling questions of law as to which there is substantial ground for difference of opinion, and an immediate appeal would not materially advance the ultimate termination of this litigation. Therefore, there is no reason why the present appeal should proceed prior to entry of a final judgment in this matter. For these reasons, Petitioner is not entitled

to proceed IFP on appeal and the appeal is dismissed.

IT IS THEREFORE ORDERED that:

1. Petitioner's Motion for Leave to Appeal IFP (filing no. [42](#)) is denied.
2. Petitioner is not entitled to proceed IFP on appeal and the appeal is dismissed. The Clerk of the court shall not process the appeal to the Eighth Circuit.
3. The Clerk of the court is directed to forward a copy of this Memorandum and Order to the parties and to the Eighth Circuit Court of Appeals.
4. Petitioner's Objection to Respondent's Motion for Extension of Time (filing no. [39](#)) is denied as moot in accordance with the court's February 2, 2011, Memorandum and Order.
5. Petitioner's Motion for Certificate of Appealability (filing no. [44](#)) is denied as premature.

DATED this 23rd day of March, 2011.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge

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